

TAM:DBS:mel:2000V00753

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

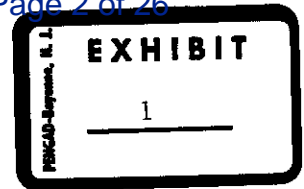
M. ASH-SHARIEF AL'ASKARI,	:	
Plaintiff	:	Civil No. 1:CV-00-1449
	:	(Caldwell, J.)
v.	:	(Smyser, M.J.)
	:	
KATHLEEN HAWKES, et al., ,	:	Electronically Filed
Defendants	:	

DEFENDANTS' EXHIBITS SUBMITTED IN OPPOSITION TO  
PLAINTIFF'S MOTION TO DEPOSE INCARCERATED PERSON

THOMAS A. MARINO  
United States Attorney

s/ D. Brian Simpson  
D. BRIAN SIMPSON  
Assistant U.S. Attorney  
Atty. I.D. No. OH 71431  
316 Federal Building  
240 West Third Street  
Williamsport, PA 17703  
Telephone: 717-221-4482  
Facsimile: 717-221-2246

Dated: September 22, 2003



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

M. ASH-SHARIEF AL'ASKARI,

PLAINTIFF,

V.

KATHLEEN HAWKES ET AL.,

DEFENDENTS

CIVIL NO.1449(CALDWELL, J.)(SMYSER, M.J.)

**NOTICE OF DEPOSITION**

To: Robin Gregg  
Administrative Remedy Coordinator,  
U.S.Bureau of Prisons,  
Allenwood Complex  
POBox 2500  
White Deer, PA 17887

To: Viola Hursh,  
Inmate Counselor,  
U.S.Bureau of Prisons  
Allenwood Complex  
POBox 2500  
White Deer, PA 17887

**NOTICE** is hereby given to Robin Gregg and Viola Hursh pursuant to Federal Rules of Civil Procedure, your oral depositions will be taken before a officer of the court as authorized by law to administer oaths, on Thursday, August 14, 2003 at 11:00 a.m. at the office of the attorney for the above named party(s), at 7 Federal Bldg., 228 Walnut Street, Harrisburg, PA (Ph:717 221 4482).

Further, pursuant to Federal R. Civ. P.30(b) (5),(6) you both are requested to produce for inspection and copying at your deposition the documents set forth in the ancillary Rule 34 Request for Production of Documents *relevant to the Plaintiff's record of administrative remedy activities while at FCI ALLENWOOD.*

**Certificate of Service**

I do hereby certify that I have submitted a copy of the foregoing Notice of Deposition upon the named deponents by mailing it the attorney of record for the defendant(s) at his/her place of business: Office of the Asst U.S.Attorney, 316 Federal Building, 240 W. 3<sup>rd</sup> St, Williamsport, PA 17703. Date: Saturday, August 09, 2003

*M. Ash-Sharief Al'Askari*

M. Ash-Sharief Al'Askari

5737 N.12 St

Phila., PA 19141

E-m.: muhammadaskari@comcast.net

Fax: 215 878 6939

Telephone: 215 224 5923



## U.S. Department of Justice

**Thomas A. Marino**  
United States Attorney  
Middle District of Pennsylvania

EXHIBIT

2

**William J. Nealon Federal Building**  
Suite 311  
235 N. Washington Avenue  
P.O. Box 309  
Scranton, PA 18501-0309  
(570) 348-2800  
FAX (570) 348-2816/348-2830

**Harrisburg Federal Building and**  
Courthouse, Suite 220  
228 Walnut Street  
P.O. Box 11754  
Harrisburg, PA 17108-1754  
(717) 221-4482  
FAX (717) 221-4582/221-2246

**Herman T. Schneebell Federal**  
Building  
Suite 316  
240 West Third Street  
Williamsport, PA 17701-6465  
(570) 326-1935  
FAX (570) 326-7916

Please respond to: Harrisburg Office

August 13, 2003

**First Class Mail & Fax (215)878-6939**

M. Ash-Sharief Al'Askari  
5737 N. 12 Street  
Philadelphia, PA 19141

RE: *Al'Askari v. Hawkes, et al.*  
No. 1:CV-00-1449 (USDC MDPA)

Dear Mr. Al'Askari:

I am writing concerning the Notice of Deposition that you sent to our office in the above-captioned case. The notice indicates that you intend to take the depositions of Robin Greggs and Viola Hursh tomorrow, August 14, 2003, at our office. **Please be advised that neither Greggs nor Hursh will appear for depositions tomorrow.**

Fed. R. Civ. P. 30(b)(1) requires that you give reasonable notice of your intent to depose a witness. The envelope that the notice of deposition arrived in is post-marked August 11, 2003—two days ago. Moreover, this notice was not received until this morning, August 13<sup>th</sup>—one day before the deposition date set forth on the notice. This is clearly not reasonable notice.

Moreover, in this case neither Greggs nor Hursh are parties to this action. The only remaining parties to this action are you and Mr. Goldring. Because neither Greggs nor Hursh are parties to this action, you must serve a deposition subpoena on them in accordance with Fed. R. Civ. P. 45.<sup>1</sup> Furthermore, Fed. R. Civ. P. 45(b)(1) requires you to tender to the named deponents "the fees for one day's attendance and the mileage allowed by law." A witness has no duty to appear at a deposition unless a subpoena has been properly served upon her and said subpoena is accompanied by a tender of a

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<sup>1</sup>Likewise, because neither Greggs nor Hursh are parties to this action, they have no duty to respond to a request for production of documents under Fed. R. Civ. P. 34.

witness fee and mileage.<sup>2</sup> Please note that even though you are proceeding *in forma pauperis*, you are still required to pay your own litigation (discovery) expenses.<sup>3</sup> Thus, you if you want to depose any non-party witness, you must tender a witness fee, mileage and pay the stenographer.

As you know, discovery closes in this case on August 25, 2003. In the event that you would still like to depose Greggs and/or Hursh, and are willing to comply with the Federal Rules of Civil Procedure, our office would agree to accept service of the deposition subpoenas on their behalf. Though I have not yet had an opportunity to speak with Greggs or Hursh about their availability, I am available on August 19<sup>th</sup>, 20<sup>th</sup> and 25<sup>th</sup>.

As a party, your deposition was properly noticed as required by the Federal Rules of Civil Procedure. Our records indicate that you received notice of your deposition on August 2, 2003, via certified mail. Accordingly, you have a duty to appear for your deposition at our office tomorrow, August 14, 2003, at 10 a.m.

Thank you for your attention to this matter.

Sincerely,

THOMAS A. MARINO  
United States Attorney



D. BRIAN SIMPSON  
Assistant United States Attorney

cc: Joseph McCluskey, Attorney-Advisor, FCI Allenwood  
FAX (570)547-7751

Michele Lincalis, Paralegal, Williamsport  
FAX (570)326-7916

---

<sup>2</sup>*Alexander v. Jesuits of Missouri Province*, 175 F.R.D. 556 (D. Kan. 1997).

<sup>3</sup>*Tabron v. Grace*, 6 F.3d 147 (3d Cir. 1993), cert. denied, 510 U.S. 1196 (1994); *Canady v. Kreider*, 892 F. Supp. 668 (M.D. Pa.), aff'd per curiam, 74 F.3d 1225 (3d Cir. 1995); *Boring v. Kokakiewicz*, 383 F.2d 468 (3d Cir. 1987); *Johnson v. Hubbard*, 698 F.2d 286 (6<sup>th</sup> Cir. 1983); *Rivera v. DisAbato*, 962 F. Supp. 38 (D. N.J. 1997).



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA  
M. ASH-SHARIEF AL'ASKARI,

PLAINTIFF,

V.  
KATHLEEN HAWKES ET AL.,

CIVIL NO.1449(CALDWELL, J.)(SMYSER, M.J.)

DEFENDENTS

NOTICE OF DEPOSITION

To: Robin Greggs  
Administrative Remedy Coordinator,  
U.S.Bureau of Prisons,  
Allenwood Complex  
POBox 2500  
White Deer, PA 17887

To: Viola Hursh,  
Inmate Counselor,  
U.S.Bureau of Prisons  
Allenwood Complex  
POBox 2500  
White Deer, PA 17887

To: IRVING ALVIN  
Reg. No. 4799006  
P.O. BOX 2500  
FCI Allenwood  
White Deer, PA  
17887

**NOTICE** is hereby given to Robin Greggs and Viola Hursh pursuant to Federal Rules of Civil Procedure, your oral depositions will be taken before a officer of the court as authorized by law to administer oaths, on September 9, 2003 at 11:30 a.m. at the office of Joseph McClusky, Attorney, FCI Allenwood Complex, White Deer, PA 17887

Further, pursuant to Federal R. Civ. P.30(b) (5),(6) you both are requested to produce for inspection and copying at your deposition the documents set forth in the ancillary Rule 34 Request for Production of Documents

1. Notice is hereby amended with inmate ALVIN  
AND TIME & VENUE of depositions

M. Ash. Al'Askari

**Certificate of Service**

I do hereby certify that I have submitted a copy of the foregoing Notice of Deposition upon the named deponents by mailing it the attorney of record for the defendant(s) at his/her place of business: Office of the Asst U.S. Attorney, 316 Federal Building, 240 W. 3<sup>rd</sup> St, Williamsport, PA 17703.

Date: ~~Tuesday~~ August 27, 2003

*M. Ash-Sharief Al'Askari*

M. Ash-Sharief Al'Askari

5737 N.12 St

Phila., PA 19141

E-m.: muhammadaskari@comcast.net

Fax: 215 878 6939

Telephone: 215 224 5923

RECEIVED - DEPT. OF JUSTICE

EXHIBIT

4

Issued by the  
UNITED STATES DISTRICT COURT  
DISTRICT OF PA

SUBPOENA IN A CIVIL CASE

Case Number:

1:00-cv-01449  
Caldwell, J.  
Smyser, M.J.

TO: IRVING ALVIN

Reg. No. 47890-066

FBI ALLENWOOD, White Deer, PA 17887

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

9 Sept. 03 11:30

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

FBI ALLENWOOD, P.O. BOX 2500  
White Deer PA 17887

DATE AND TIME

9 Sept. 03 11:30 AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Any briefs, legal papers, petitions you have previously filed in any court between 1998-1999.

PLACE

FBI ALLENWOOD, P.O. BOX 2500  
White Deer, PA 17887

DATE AND TIME

9 Sept. 03

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

MARTIN DANDREA

Clerk

J. Smyser Deputy Clerk 27 Aug 2003

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE

PLACE

SERVED

27/8/03

P.O. Box 2000  
FET ALLENWOOD, PA 17887

SERVED ON (PRINT NAME)

MANNER OF SERVICE

Irving Alvin

VIA Office of U.S. Attorney

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

27 Sept. 03  
DATE

SIGNATURE OF SERVER

M. J. Shoring

ADDRESS OF SERVER

5737 N. 12 St

Phila., PA 19141

AO88 (Rev. 1/94) Subpoena in a Civil Case

Issued by the

## UNITED STATES DISTRICT COURT

DISTRICT OF

Pennsylvania

SUBPOENA IN A CIVIL CASE

Middle

M. Ash-Sharif AL'Askari,

V.

Kathleen Hawkes et. AL.,

Case Number: 1:00-cv-1449

Caldwell, J.,  
Smyser, M.S.TO: Robin Greggs  
[SEE ATTACHED NOTICE]

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

(Office) Joseph McCluskey, Esq.

DATE AND TIME

FBI Allenwood Complex, White Deer, PA

9 Sept 03, 11:30 AM

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

ALL copies of records maintained by your office of submitted by the plaintiffs to the B.O.P., at any time, pursuant to 28 C.F.R. § 542, et. seq., Bureau wide.

PLACE OF DEPOSITION Office of Joseph McCluskey, Esq.

DATE AND TIME

FBI Allenwood Complex, White Deer, PA

9 Sept 03, 11:30 AM

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

MARY E. D'ANDREA

Clerk of Superior Deputy Clerk

August 27, 2003

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

(See Rule 45, Federal Rules of Civil Procedure, Parts C &amp; D on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE

PLACE

SERVED

27/8/03

FBI Allenwood, PA 17887

SERVED ON (PRINT NAME)

MANNER OF SERVICE

Robin Gregg

Via Office of U.S. Attorneys

SERVED BY (PRINT NAME)

TITLE

X

X

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

27/8/03

DATE

SIGNATURE OF SERVER

W. Ash-Sharif al-Ashari

ADDRESS OF SERVER

5737 N. 12 St  
Phila, PA 19141

Issued by the  
UNITED STATES DISTRICT COURT

DISTRICT OF

Pennsylvania

SUBPOENA IN A CIVIL CASE

Middle  
M. Ash-Sharief AL'Askari,

v.  
Kathleen Hawkes et. AL;

Case Number: 1:00-cv-01449  
Cabwell, J.  
Smyser, M.J.

TO: Viola Hursh  
[see attached NOTICE]

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below  
testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition  
in the above case.

PLACE OF DEPOSITION

Office of Joseph McClusky, Esq.  
FBI Allenwood Camp, White Deer, PA

DATE AND TIME

9 Sept. 03, 11:30 AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the  
place, date, and time specified below (list documents or objects):

COUNSELOR'S Admini-  
strative Remedy Log Book for the period of  
March - September, 1999, for Unit 3A, FBI Allenwood

PLACE

Office of Joseph McClusky, Esq.  
FBI ALLENWOOD, White Deer, PA

DATE AND TIME

9 Sept. 03, 11:30 AM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers,  
directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated,  
the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

MARY E. D'ANDREA Clerk & Deputy Clerk

27 August 03

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE

PLACE

SERVED

27/8/03

FCT Allenwood, PA

SERVED ON (PRINT NAME)

MANNER OF SERVICE

V. Hursb.

Via Office of U.S. Attorneys, MPPA

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

27/8/03  
DATE

SIGNATURE OF SERVER

M. Ash Sharief Al Waki

ADDRESS OF SERVER

5737 N. 12 St

Phila. PA 19141

Certificate of Service

I do hereby certify that I have submitted a copy of the foregoing Notice of Deposition upon the named deponents by mailing it the attorney of record for the defendant(s) at his/her place of business: Office of the Asst U.S. Attorney, 316 Federal Building, 240 W. 3<sup>rd</sup> St, Williamsport, PA 17703. Date: Tuesday, August 27, 2003

*M. Ash-Sharief Al'Askari*  
M. Ash-Sharief Al'Askari

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

M. ASH-SHARIEF AL'ASKARI,

PLAINTIFF,

V.  
KATHLEEN HAWKES ET AL.,

CIVIL NO. 1449 (CALDWELL, J.) (SMYSER, M.J.)

DEFENDENTS

NOTICE OF DEPOSITION

To: Robin Greggs  
Administrative Remedy Coordinator,  
U.S. Bureau of Prisons,  
Allenwood Complex  
PO Box 2500  
White Deer, PA 17887

To: Viola Hursh,  
Inmate Counselor,  
U.S. Bureau of Prisons  
Allenwood Complex  
PO Box 2500  
White Deer, PA 17887

To: IRVING ALVIN  
Reg. No. 47890066  
P.O. BOX 2500  
FCI ALLENWOOD  
White Deer, PA  
17887

**NOTICE** is hereby given to Robin Greggs and Viola Hursh pursuant to Federal Rules of Civil Procedure, your oral depositions will be taken before a officer of the court as authorized by law to administer oaths, on September 9, 2003 at 11:30 a.m. at the office of Joseph MacClusky, Attorney, FCI Allenwood Complex, White Deer, PA 17887

Further, pursuant to Federal R. Civ. P.30(b) (5),(6) you both are requested to produce for inspection and copying at your deposition the documents set forth in the ancillary Rule 34 Request for Production of Documents

1. Notice is hereby amended with inmate ALVIN  
AND TIME & VENUE of depositions

*M. Ash. Al'Askari*

From: M. Ash-Sharif Al'Askari

To: Robin Gregg

Date: 27 August, 03

Re: Witness & Mileage fee

You are entitled to witness fee and mileage fee to attend your deposition at FCI Allenwood Complex at the Office of Joseph McCluskey, Attorney/Advisor and Officer of the Court from M. Ash-Sharif Al'Askari as provided by law. You may, however, waive this tender of fee.

M. Ash-Sharif Al'Askari

5737 N. 12 St.

Phila, PA. 19141

(Ph: 215-224-5923)

E-mail: muhammadaskari

@comcast.net

From: M. Ash Sharief Al'Askari

To: Viola Hurst

Date: 27 August, 03

Re: Tender of fee

You are entitled to witness & mileage fee to attend your deposition at FCI Aldenwood Complex, at the office of Joseph McClusky, attorney and officer of the Court, from M. Ash Sharief Al'Askari. You may however receive such as a government employee pursuant to law.

M. Ash Sharief Al'Askari

5733 N. 12 St.

Phila, PA 19141

Ph: 215-224-5923

E-mail: muhammadaskari@comcast.net.



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

M. ASH-SHARIEF AL'ASKARI,

PLAINTIFF,

V.

CIVIL NO.1449(CALDWELL)  
(SMYSER, M.J.)

KATHLEEN HAWKES ET AL.,

DEFENDANTS

**NOTICE OF DEPOSITION**

To: Robert Goldring  
C/o Joseph McClusky, Attorney/Advisor,  
Allenwood Complex  
POB2500  
White Deer, PA 17887

**NOTICE** is hereby given to Robert Goldring pursuant to Federal Rules of Civil Procedure, your oral depositions will be taken before a officer of the court as authorized by law to administer oaths, on Tuesday, 9 September, at 11:30 at the office of Joseph McClusky, Esq., attorney advisor to the U.S.Attorneys for the Middle District of Pa, who are representing the above named party(s), at Allenwood Federal Complex, White Deer, PA 17887.

Further, pursuant to Federal R. Civ. P. 30(b) (5),(6) you are requested to produce for inspection and copying at your deposition the documents set forth in the ancillary Rule 34 Request for Production of Documents. Particularly, documents created, signed or authorized by you wholly related to this action involving the plaintiff and you the plaintiff at Allenwood during the period of 1999.

**Certificate of Service**

I do hereby certify that I have submitted a copy of the foregoing Notice of Deposition upon the named deponents by mailing it to the attorney of record for the defendant(s) at his/her place of business: Office of the U.S. Attorneys, 316 Federal Building, 240 W. 3<sup>rd</sup> St, Williamsport, PA 17703

Date: 27 August 2003

M. Ash-Sharief Al'Askari

5737 N. 12 St

Phila., PA 19141

E-m.: [muhammadaskari@comcast.net](mailto:muhammadaskari@comcast.net)

Telephone: 215 224 5923



## U.S. Department of Justice

**Thomas A. Marino**  
United States Attorney  
Middle District of Pennsylvania



**William J. Nealon Federal Building**  
Suite 311  
235 N. Washington Avenue  
P.O. Box 309  
Scranton, PA 18501-0309  
(570) 348-2800  
FAX (570) 348-2816/348-2830

**Harrisburg Federal Building and**  
Courthouse, Suite 220  
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Harrisburg, PA 17108-1754  
(717) 221-4482  
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**Herman T. Schneebell Federal**  
Building  
Suite 316  
240 West Third Street  
Williamsport, PA 17701-6465  
(570) 326-1935  
FAX (570) 326-7916

Please respond to: Harrisburg Office

**Federal Express & Fax (215)878-6939**

September 3, 2003

M. Ash-Sharief Al'Askari  
5737 N. 12 Street  
Philadelphia, PA 19141

RE: *Al'Askari v. Hawkes, et al.*  
No. 1:CV-00-1449 (USDC MDPA)

Dear Mr. Al'Askari:

I am writing concerning the Notices of Deposition that you sent to our office in the above-captioned case. The notice indicates that you intend to take the depositions of Robert Goldring, Robin Greggs, Viola Hursh and Irving Alvin on September 9, 2003, at FCI Allenwood. **PLEASE BE ADVISED THAT THE DEPOSITIONS CANNOT TAKE PLACE ON SEPTEMBER 9, 2003, at FCI ALLENWOOD.**

First, **the warden of FCI Allenwood will not agree to have the depositions conducted at the prison.** Moreover, you have no right to conduct depositions at Allenwood. Therefore, I suggest that the depositions take place at our office in Harrisburg.

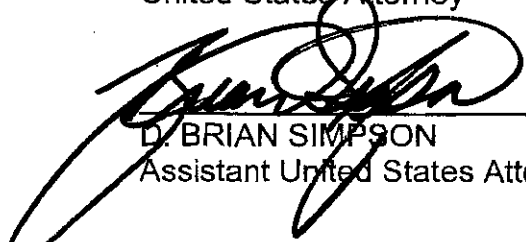
Second, **Douglas Goldring is not available on September 9<sup>th</sup>.** Mr. Goldring is no longer at Allenwood. Nonetheless, I have contacted Goldring, Greggs and Hursh to ascertain their availability to be deposed. As early as tomorrow, I hope to provide you with a list of dates that each witness and I are available. Hopefully, we can select a date that is convenient for all parties.

Third, you have indicated that you wish to depose Irving Alvin. It is my understanding that Alvin is an inmate at Allenwood. Accordingly, Fed. R. Civ. P. 30(a)(2) requires you to obtain leave of court before deposing an inmate.

Thank you for your attention to this matter.

Sincerely,

THOMAS A. MARINO  
United States Attorney



D. BRIAN SIMPSON  
Assistant United States Attorney

cc: Joseph McCluskey, Attorney-Advisor, FCI Allenwood  
FAX (570)547-7751

Michele Lincalis, Paralegal, Williamsport  
FAX (570)326-7916

## U.S. Department of Justice



**Thomas A. Marino**  
United States Attorney  
Middle District of Pennsylvania



**William J. Nealon Federal Building**  
Suite 311  
235 N. Washington Avenue  
P.O. Box 309  
Scranton, PA 18501-0309  
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228 Walnut Street  
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(717) 221-4482  
FAX (717) 221-4582/221-2246

**Herman T. Schneebeli Federal**  
Building  
Suite 316  
240 West Third Street  
Williamsport, PA 17701-6465  
(570) 326-1935  
FAX (570) 326-7916

Please respond to: Harrisburg Office

September 5, 2003

**FEDERAL EXPRESS**

M. Ash-Sharief Al'Askari  
5737 N. 12 Street  
Philadelphia, PA 19141

RE: *Al'Askari v. Hawkes, et al.*  
No. 1:CV-00-1449 (USDC MDP)

Dear Mr. Al'Askari:

I am writing concerning the Notices of Deposition that you sent to our office in the above-captioned case. The notice indicates that you intend to take the depositions of Robert Goldring, Robin Greggs, Viola Hursh and Irving Alvin on September 9, 2003, at FCI Allenwood. **The depositions cannot take place on September 9<sup>th</sup> at Allenwood for a number of reasons: (1) the warden will not agree to have the depositions conducted at Allenwood; (2) Goldring is not available on September 9<sup>th</sup>; (3) you have failed to tender mileage and witness fees to Hursh and Greggs; and (4) you must obtain leave of court to depose Alvin, an inmate at Allenwood.**

Because the warden will not permit the depositions to be taken at FCI Allenwood. I suggest that the depositions be taken at our Harrisburg office. Furthermore, **I have been informed that Goldring, Hursh and Greggs are all available the week of September 29<sup>th</sup> through October 2<sup>nd</sup>.** Therefore, I suggest that we reschedule the depositions for a date certain that week. I would prefer that we proceed on Monday, September 29<sup>th</sup>, depending on your availability. Once we agree on a mutually convenient date, I will make arrangements to reserve a conference room.

Please be advised that you are responsible for making arrangements for a stenographer to attend any depositions that you wish to take.<sup>1</sup> Likewise, you are responsible for all costs incurred in any such depositions.<sup>2</sup> The Government **will not** make the arrangements for you. Please be aware that if the depositions cannot go forward because you have failed to make the proper arrangements, the Government will seek to recover its costs from you.

Turning to the witnesses you intend to depose:

Douglas Goldring

Mr. Goldring is no longer at Allenwood. In fact, he is no longer in the Commonwealth of Pennsylvania. Nonetheless, the Government does not oppose your efforts to depose him. Goldring is available during the week of September 29, 2003, and will appear at our Harrisburg office.

Robin Greggs & Violet Hursh

Likewise, the Government does not oppose your efforts to depose Greggs and Hursh, provided you comply with the Federal Rules of Civil Procedure. In my letter of August 13, 2003, I stated that our office would agree to accept service of the deposition subpoenas on the behalf of Greggs and Hursh. Nonetheless, Fed. R. Civ. P. 45(b)(1) requires you to tender to the named deponents "the fees for one day's attendance and the mileage allowed by law." A witness has no duty to appear at a deposition unless a subpoena has been properly served upon her and said subpoena is accompanied by a tender of a witness fee and mileage.<sup>3</sup> Neither Greggs nor Hursh are willing to waive their witness fee and mileage. Please note that even though you are proceeding *in forma pauperis*, you are still required to pay your own litigation (discovery) expenses.<sup>4</sup> Thus, if you want to depose any non-party witness, you must tender a witness fee, mileage and pay the stenographer.

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<sup>1</sup>Fed. R. Civ. P. 30(b).

<sup>2</sup>*Id.*

<sup>3</sup>*Alexander v. Jesuits of Missouri Province*, 175 F.R.D. 556 (D. Kan. 1997).

<sup>4</sup>*Tabron v. Grace*, 6 F.3d 147 (3d Cir. 1993), *cert. denied*, 510 U.S. 1196 (1994); *Canady v. Kreider*, 892 F. Supp. 668 (M.D. Pa.), *aff'd per curiam*, 74 F.3d 1225 (3d Cir. 1995); *Boring v. Kokakiewicz*, 883 F.2d 468 (3d Cir. 1987); *Johnson v. Hubbard*, 698 F.2d 286 (6<sup>th</sup> Cir. 1983); *Rivera v. DisAbato*, 962 F. Supp. 38 (D. N.J. 1997).

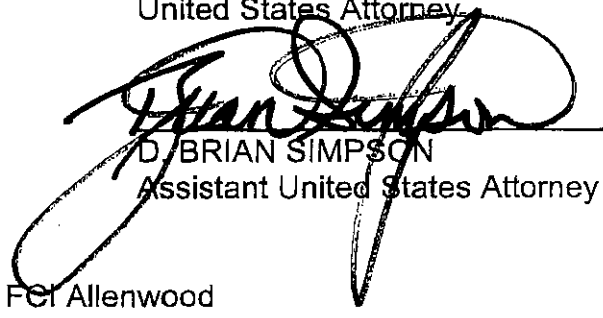
Irving Alvin

As I advised you in my September 3<sup>rd</sup> letter, Alvin is currently an inmate at Allenwood. Accordingly, Fed. R. Civ. P. 30(a)(2) requires you to obtain leave of court before deposing an inmate. The Government will oppose your efforts to depose Alvin.

Thank you for your attention to this matter.

Sincerely,

THOMAS A. MARINO  
United States Attorney



D. BRIAN SIMPSON  
Assistant United States Attorney

cc: Joseph McCluskey, Attorney-Advisor, FCI Allenwood  
FAX (570)547-7751

Michele Lincalis, Paralegal, Williamsport  
FAX (570)326-7916

**U.S. Department of Justice****Thomas A. Marino**

United States Attorney

Middle District of Pennsylvania

**EXHIBIT**

9

**William J. Nealon Federal Building**  
Suite 311  
235 N. Washington Avenue  
P.O. Box 309  
Scranton, PA 18501-0309  
(570) 348-2800  
FAX (570) 348-2816/348-2830

**Harrisburg Federal Building and**  
Courthouse, Suite 220  
228 Walnut Street  
P.O. Box 11754  
Harrisburg, PA 17108-1754  
(717) 221-4482  
FAX (717) 221-4582/221-2246

**Herman T. Schneebeli Federal**  
Building  
Suite 316  
240 West Third Street  
Williamsport, PA 17701-6465  
(570) 326-1935  
FAX (570) 326-7916

Please respond to: Harrisburg Office

September 8, 2003

**FIRST CLASS MAIL**

M. Ash-Sharief Al'Askari  
5737 N. 12 Street  
Philadelphia, PA 19141

RE: *Al'Askari v. Hawkes, et al.*  
No. 1:CV-00-1449 (USDC MDPa)

Dear Mr. Al'Askari:

Thank you for agreeing to reschedule the depositions in this case. As I mentioned in my previous letter, Douglas Goldring, Viola Hursh and Robin Greggs are available to be deposed the week of September 29<sup>th</sup> through October 2<sup>nd</sup>. I understand that you would prefer to depose the witnesses on October 9<sup>th</sup> or 10<sup>th</sup>. Unfortunately, not everyone is available on either of those October dates. I would ask you to review your schedule and see if it is possible that you could depose the witnesses on any day during the week of September 29<sup>th</sup> through October 2<sup>nd</sup>. If not, please provide me with a list of alternative dates and I will determine the witnesses' availability. For the sake of everyone, I would like to conduct all of the depositions on one day.

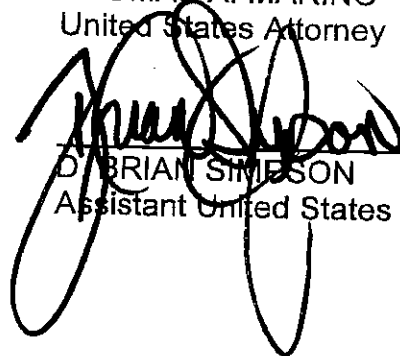
Because our Williamsport office is in effect a satellite office, it would be extremely difficult to make the arrangements necessary to conduct the depositions there. The Williamsport office has only one conference room and it is smaller than the conference rooms in Harrisburg. Simply put, it will be easier to make the necessary arrangements and hold the depositions in Harrisburg. If you would agree to conduct the depositions in Harrisburg, Hursh and Greggs will waive the witness and mileage fees that they would otherwise be entitled to under Fed. R. Civ. P. 45. That is to say, that Hursh and Greggs will appear in Harrisburg at no cost to you. Moreover, I believe that holding the depositions in Harrisburg would require you to travel a shorter distance.

Please be advised that you are responsible for making arrangements for a stenographer to attend any depositions that you wish to take.<sup>1</sup> Likewise, you are responsible for all costs incurred in any such depositions.<sup>2</sup> The Government **will not** make the arrangements for you. Nonetheless, as a courtesy I am providing you with a listing of agencies that offer stenographic services. Please be aware that if the depositions cannot go forward because you have failed to make the proper arrangements, the Government will seek to recover its costs from you.

Thank you for your attention to this matter.

Sincerely,

THOMAS A. MARINO  
United States Attorney



BRIAN SIMPSON  
Assistant United States Attorney

enclosure

cc: Joseph McCluskey, Attorney-Advisor, FCI Allenwood  
FAX (570)547-7751

Michele Lincalis, Paralegal, Williamsport  
FAX (570)326-7916

Steve Carmichael, U.S. Parole & Probation  
FAX (215)597-8856

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<sup>1</sup>Fed. R. Civ. P. 30(b).

<sup>2</sup>*Id.*

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

M. ASH-SHARIEF AL'ASKARI,	:	
Plaintiff	:	Civil No. 1:CV-00-1449
	:	(Caldwell, J.)
v.	:	(Smyser, M.J.)
	:	
KATHLEEN HAWKES, et al., ,	:	Electronically Filed
Defendants	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

That on September 22, 2003, she served a copy of the attached

DEFENDANTS' EXHIBITS SUBMITTED IN OPPOSITION TO  
PLAINTIFF'S MOTION TO DEPOSE INCARCERATED PERSON

by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Williamsport, Pennsylvania.

Addressee:

M. Ash-Sharief Al'Askari  
5737 N. 12<sup>th</sup> Street  
Philadelphia, PA 19141

s/ Michele E. Lincalis  
MICHELE E. LINCALIS  
Paralegal Specialist